Sectt. II-29—27,004—25-11-25.

Revenue (1926) Department.

Ordinary SERIES.

G.O. No. 1767

DATED 13 10 26

[Despatch Abstract.]

Suits - (South Kanara) - High Court - Appeals Nos.94,108 and 171 /23 - Escheat - Compromise - Sanctioned.

VERY URGENT.

Judicial **DEPARTMENT.**

Rev 2593 E
8.10.26.

Received ..... 192 *Registered* 192

Subject.

Escheat matter - South Kanara District - Appeals Nos. 94, 108 and 171 of 1923 - High Court.

ENCLOSURES.
No. .....
.....
Spare copies .....

No. 953

Station Madras. *Dated the* 5th October '26 192

M.R.Ry

From (Name) Rao Bahadur C.V.Anantakrishna ayyar avl.,
(Designation) Ag. Government Pleader,
Madras.

To The Secretary to the Government of Madras
Revenue Department.

Sir,

I have the honour to state that the Government in G.O. No. 2441, Revenue, dated the 8th August 1917 resolved to assert the claim of the ~~estate~~ State to the entire property left by one Annaya Shadanga of Pilathabettu village, Mangalore taluk, South Kanara District, as an escheat and instructed the Collector of South Kanara to take steps accordingly

The facts of the case appear in printed G.O. No 2441 aforesaid; at page 5 of the G.O. the geneology of the family of Annaya Shadanga is given. Annaya Shadanga having died in the year 1883 leaving a widow, Mahalakshmi who

who died in 1911. After Mahalakshmi's death, enquires were started by the Collector as to whether any heirs exist as to Annaya Shadanga's property. As mentioned in the letter of the Collector of South Kanara dated 18-12-1916 printed at page 1 of the above G.O., there was a lady Sarasvathi by name as shown in the pedegree. The question whether Sarasvathi would be an heir under Hindu Law was referred to the Government Pleader Madras The opinion of the then Government Pleader, Mr. (now Justice) Ramesam, is printed at page 4. He was of opinion "that Sarasvathi is the heir of the entire properties of Annaya Shadanga including his properties transferred to Narayana Sastri and that no escheat proceedings ought to be taken in the matter" The matter was referred to the Advocate General and his opinion is printed at pages 5 and 6 of the above G.O He was of opinion that Sarasvathi is not an heir to Annayya Shadanga and that the Crown in the absence of any other heir on the death of Mahalakshmi became entitled to the properties of the late Annayya Shadanga by escheat". The Madras High Court has decided that females born in the family inherit as heirs in the absence of male bandhus- see the cases mentioned in the 4th paragraph of the Government Pleader's opinion printed at page 4 The High Courts of Calcutta and Allahabad on the other hand do not recognise any females as heritable heirs unless Hindu Texts specifically mention them as heirs. As observed by the learned Advocate General at page 6 The Madras view is however opposed to that of the other High Court's administering Mitakshara Law. It has been severely criticised by the late Mr. Mayne and by other writers ..... But as I said the point must be treated as concluded by stare decisis and as hardly open except before the Privy Council. The Madras view may have been shaken but has not been upset by the recent decision

decision of the Privy Council in 42 Calcutta, 384 = 41 Indian appeals, 290". The then Government leader in the last paragraph of his opinion at page 4 of the G.O. puts the matter as follows "Incidentally, it may be mentioned the Madras cases have not been followed in the other High Courts and the question has not been taken to the Privy Council. But so far as the Madras High Court is concerned, they have been accepted as good law for forty years." The Government as mentioned above resolved that the claim of the State to the properties as escheat should be asserted and accordingly suit No. 2 of 1921 on the file of the Sub Court, South Kanara, was instituted by the Government against the person in possession, the 1st defendant being the widow of Venkatramana Shadanga and the other defendants being alienees in posses ion of some portions of the properties. The Sub Court followed the Madras decision and held that Saraswathi could come in only as a Bhinnagotra sapinda or bhandhu, but having regard to the decision in I.L.R. 42 Calcutta, 384 P.C. held that as she was removed more than 5 degrees from the common ancestors, therefore, she could not be said to be heritable bhandhu. On that ground he held against Saraswathi's claim. Overruling the other contentions of the defendants, the lower court declared the properties to have escheated to the Government and passed a decree in favour of the Government for possession of the properties and mesne profits for 3 years prior to the date of the suit. The defendants have preferred appeals (A.S 94, 108 and 171/23) to the High Court and the Government have filed a memorandum of cross objections claiming a larger amount for mesne profits

The appeals came on for hearing before the learned

Chief

Chief Justice and Mr. Justice Sundaram Chetti. The appeals were heard for two days and on 27-9-1926, their Lordships after the arguments relating to the questions of law that arise in the case were over and without going into the questions of fact relating to the partition, alienations, etc, mentioned to the vakils on both sides that in their opinion ~~that~~ this was a matter that may be well compromised and settled between the parties. It is true that they have not pronounced ~~in~~ judgment on the questions of law that were argued but as far as I have been that they are pressed by the fact able to understand, it would seem ~~to me~~ that the Madras decisions which have been followed in the Presidency for more than 40 years declared that females born in the family are heirs though they are not specifically mentioned in the Hindu Law Texts and in this respect the High Court is not evidently prepared to reconsider the Madras decisions in spite of the fact that the Calcutta and Allahabad Courts hold a contrary view With reference to the arguments of the Subordinate Judge, viz that Sarasvathi not being within 5 degrees therefore she is not entitled to inherit, their Lordships evidently consider that the decision in 42 Calcutta 384, on which the Subordinate Judge relies, is not an authority for that propostition. At page 414 of 42 Calcutta, the Privy Council ~~hold~~ laid down the following:- "On the mother side in the mother's line after the 5th; on the father's side in the father's line after the seventh (ancestor), the sapindas relationship ceases" The High Court would seem to think that it is only if a claimant traces his connection through his mother side to the last male holder ~~through~~ that the limit of 5 degrees would apply. If, however, the claimant traces such relationship through his father side, then, it is only after the seventh degree that the heritable right ceases. The claimant in 42 Calcutta traced

traced his relationship through his mother and therefore the Privy Council in that case held that he was not entitled to succeed. This point has been considered by Spencer and Venkatasubba Rao J. in a recent case reported in 49 Madras 652 at pages 664 and 689. At page 689 Venkatasubba Rao J. states as follows:- "I have said in the course of this judgment that the case of bhandhus, sapinda relationship ceases beyond the 5th from the mother and the 7th from the father" and after referring to I.L.R. 42 Calcutta 384, His Lordship proceeds "I referred to this point because there are some observations in the judgment which may at first sight seem to apply that the limit of sapinda relationship in the case of bhandhu ceases with the 5th degree, irrespective of whether the claim is traced through the father or the mother" and concludes by stating that there is nothing in the judgment in I.L.R. 42 Calcutta to suggest that their Lordships intended to do away in the case of bhinnagothra sapindas the well recognised distinction dependent upon whether the claim is traced through the father or the mother. Thus the latest view of the Madras High Court is that heritable bhandhu relationship exists to 5 degrees if the claimant traces through the claimant's mother side and to 7 degrees if the claimant traces through his father side. In the present case, Sarasvathi traces through her father side as is clear from the pedegree. That being so, according to this view Sarasvathi would be a heritable bhandhu and the reasoning by the Subordinate Judge held against her rights viz that she is beyond the 5th is not correct. The learned Judges seem to be pressed with this view I argued that Sarasvathi being a female could not inherit at all as there are no special texts in her favour. I was met by the various Madras decisions

under

under which for the past forty years the Madras High Court held that such females do inherit before the Crown though they inherit only after all male bhandhus are exhausted hen I suggested that the Madras view being opposed to the view of the Calcutta and Allahabad courts, and apparently also against Mr. Mayne's view the matter may have to be taken to Privy Council for an authority ative ~~of the~~ decision on the point. The Judges seem to recognise that also, but are not evidently prepared to reconsider the Madras view. When I supported the Sub Judge's view, that sapinda relationship in the case of bhinnagothra sapinda or bhandhu stops with the 5th degree and that the Privy Council in 42 Calcutta 384 is an authority for ~~it~~ that, the other side urged arguments by relying on the latest Madras case in 49 Madras 652 mentioned by me above. The learned Judges seem to be evidently prepared to follow that ruling of Spencer and Venkatasubba Rao JJ. and hold that as Sarasvathi in this particular case is related to the last male holder through her father's side, the bhandhu relationship exists upto 7 degrees and not 5 degrees as mentioned by the Subordinate Judge.

At this stage I suggested that Sarasvathi who was alive at the date of the suit died subsequently and ~~is~~ as under Hindu Law, Sarasvathi could take only a woman's estate the question as to escheat will again arise after Sarasvathi's death because Sarasvathi's son should claim only in his own right as a bhandhu to the last male holder Annaya Shadanga I continued the same line of arguments by stating that as he (Sarasvathi's son) would be mor than 7 degrees removed from the last male holder, he could not be said in any view to be a heritable bhandu and consequently according to the Privy Council case in 42 Calcutta 384, the

Government would be entitled to claim the property as escheat, now that/Sarasvathi being dead, her son could not be said to be a heritable bhandu. This suggestion of mine exercised the minds of the appellant and the learned Judges for some time. The Courts seemed to agree with me that if the present appeal will have to be allowed and the present suit dismissed on the ground that on the date of the institution of the present suit Sarasvathi was alive and she should be held to be a heritable bhandhu under Madras decision, yet, as she is dead now and as her son could claim only on his own independent right as a bhandu of the last male holder according to the Hindu Law and being more than 7 degrees remote he could not be said to be a heritable bhandu, the Government by filing a fresh suit could evidently claim the whole properties included in the present suit. But they were not prepared to allow the plaint to be amended at present by stating-now Sarasvathi being dead the decree of the lower court should be sustained on this new ground, the court holding that if on the date of the plaint there was no case of escheat, the Government cannot continue the suit or claim a decree by the happening of a subsequent event which may have given them a right to escheat. To save further litigation between the parties, they made a very strong suggestion that it seems to them that in the interests of all concerned the present is a case for some amicable arrangement to be come to between the parties.

On the one hand there are the questions on the merits relating to partition, alienation, etc. on which the findingsof the lower court are in favour of the Government but which are impugned by the defendants - appellants in these appeals. There is also the fact

that

that the defendants have set up one Venkatramana Jogithaya as an existing heir who is entitled to succeed, contending and that in any event there is no case of escheat. The defendants contend that the last male holder Annayya Gnadanga had his Ruckmani or Kaveri as mother's sister and that Venkatraman Jogithaya is the son of that Ruckmani or Kaveri, and relate being the last male holder as the mother's sister's son, this Venkatramana Jogithaya would be admittedly heir according to Hindu Law being athma bhandu of the last male holder. But he was not set up as a heir in the escheat proceedings though in the written statement of the 1st defendant he was set up as a preferential existing heir entitled to come in before escheat. Some witnesses on the side of the defendant spoke to his existence and curiously enough some witnesses on the side of the plaintiff-P.Ws 2 and 4 also spoke to his existence at the time of Mahalakshmi's death and to his having died a few years before suit. The Sub Judge, however, held against the existence of such a person on the main ground that he was not set up in escheat proceedings. In ordinary circumstances one would have thought that the reasoning of the Subordinate Judge on this point is weighty, but the Subordinate Judge missed the importance of one circumstance The 1st defendant is claiming right in herself and in her daughter Sarasvathi if she (the 1st defendant) gave satisfactory evidence about the existence of Venkatramana Jogithaya, then Venkatramana Jogithaya would be a preferential heir to her daughter Sarasvathi; and in case Venkatramana Jogithaya claimed places the properties, the defendants would have no answer to his claim as heir. It should be noticed that twelve years had not elapsed from the date of the widow Mahalakshmi's death at the time of the proceedings in the lower court.

Sarasvathi

Mahalakshmi Saraswathi died in 1911 and the proceedings in the lower court were over and the ~~xxxxxxxxxxxxxxxxxxxxxxxxxx~~ decree of the lower court passed on 12-9-1922, so that even on the date of the lower court's decree Venkatramana Jogathaya's right to enforce his claim as heir would not be barred by limitation. That ~~evidently~~ presumably is the reason why more evidence was not adduced as regards the existence of Venkatramana Jogathaya in the lower court. The Sub Judge in para 28 of his judgment puts the question why did not the defendants go to the box and depose to the relationship of Venktramana Jogathaya. The answer evidently is that if they did so then, Venkatramana Jogathaya could the next day claim the properties as heir and the defendants would have no answer to his claim as heir - except of course to urge the validity of the alienations made by the widow-~~xxx~~ or points found against them by the Sub Judge in the present suit.

On the other hand, the view of the Madras High Court, that females born in the family of the last male holder are ~~xx xxx~~ heirs though notspecifically mentioned in the texts, is not accepted by Calcutta and Allahabad High Courts amd by Mr. Mayne and one cannot say what the Privy Council may say; if the Madras High Court's view is contested this question before them. There is the further circumstance that the observation of the Privy Council in 42 Calcutta 384 ~~as regards~~ that the right of bhinnagothra sapinda or bhandhu to inherit ceases after the 5th degree ~~or~~ so prima facie in support of the Government's contention and was so understood by the Subordinate Judge, and the learned Advocate General's ~~in his~~ opinion printed at page 3 of the G.O. is also in favour of the Government. The editor of the most recent editions of Mayne's Hindu Law also seems to have been of that view - ~~that~~

though there is the opinion of Spencer and Venkata Subba Rao JJ. against this. "In these circumstances it seems to me that what is likely to happen with regard to these appeals is this - the appeals would be allowed and the present suit by the Government will be dismissed on the ground that Sarasvathi is a heir and that on the date of the present suit there was no occasion for escheat. The present litigation should either be carried on appeal to Privy Council, or the Government would try a fresh suit alleging escheat on the death of Sarasvathi in 1921 (I got information from the Collector of South Kanara that she died in 1921) No body can say what view the Privy Council is likely to take in such matter though the appeal to P. Council is only means of having this question of the limit of existence of bhandus who are entitled to succeed before Government would claim as escheat decided will be authoritatively laid down as cases very often arise where such distant relationship exists and claims properties of deceased owners When a proper occasion arises it may become necessary to have the matter taken to the Privy Council to have the question authoritatively decided in spite of the observation made by the Privy Council at page 421 of 42 Calcutta to the following effect "As regards the other consideration which is based on the possibility of the Crown becoming a claimant in the presence of remote bhinngotra, their Lordships need only observe that whether such a claim would be justified or even be likely to be advanced, it does not seem necessary to express an opinion in the present case".

In the absence of an appeal to Privy Council by the Government, a fresh suit will have to be filed by the Government claiming the properties as escheat on Sarasvathi's death. The defendants are sure to again raise the existence

of Venkatrama Jogathaya as an athma bhandhu of the last male holder and it is very probable that they wil be able to produce a larger volume of evidence in support of his existence and claim. It is most likely that the defendants who refer to his existence would then go to the box and swear to his relationship, because having regard to the remarks already made, more than twelve years have now elapsed from the date of the death of Mahalakshmi - the widow - in 1911 and the rights of Venkatramana Jogathaya, if any, would all be barred by limitation by 1923 - the defendants being in possession of the properties could defeat the claim of Venkatramma Jogathaya if a suit be instituted on his behalf - he being dead, by his son; the defendants could also defeat the Government s suit by proving the existence of that nearer heir. The present findings of the Sub Judge based on the evidence in the present case, that Venkatramana Jogathaya's existence and relationship have not been proved will not be res judicata in the subsequent suit since the present suit 2 of 1921 being dismissed in toto, none of the other findings against the defendants could be said to be res judicata. Lastly there is the question relating to the validity and binding nature of the partition and the alienations from the widow which are set up by the defendants: but having gone through the evidence in the case, I do not think that the defendants are likely to succeed in getting the findings of the Sub Judge upset on these points relating to partition and alienations

Having given a full description of the present position - (I am afraid rather a lengthy and probably a tedious one) - I have the honour to state the exact reason for now addressing the Government in the matter and for soliciting early orders of Government. Proposals for compromise After the learned Chief Justice and

Justice

Justice Sundaram Chetti expressed themselves as mentioned above that the present is a fit matter to be amicably settled between parties I had occasion to discuss with the vakils for the appellants They naturally wanted to get their clients before they could usefully discuss this question with me They having got their clients (rather all but one) the discussion went on for sometime yesterday and it was resumed to-day I am able to gather that the appellants are prepared for a compromise. As regards its terms, I understand that they would be satisfied with a moiety of the estate, agreeing to surrender to the Government the other moiety of the estate. The several defendants would give up in favour of the Government one half of the property in his or her possession with the existing improvements thereon. As regards mesne profits they are not evidently prepared to allow any mesne profits to the Government and they said that the Government should be satisfied with getting one half of the properties in the possession of the several defendants.

As regards costs, each party should bear his or her own costs both in the lower court and in the High Court in respect of the present litigation.

to recover back not only the lands of which they were in possession but they would be entitled to get also mesne profits from the Government for the period that the Government were in possession. What I mean is that the income that the Government got during these 18 months from the whole of the properties may be allowed to be retained by the Government as part of this compromise. I have been trying to get better terms but I am afraid I cannot hold out any hopes as to anything more than what I have mentioned above

Having regard to the difficulties pointed out by me above, I am of opinion that matter may be compromised in the way suggested above, unless there are points for consideration of which I am not aware

The Government may like to have some idea as regards the value of the whole estate which has been declared to be escheated to Government by virtue of the lower court's decision. The lower court has calculated the amount of mesne profits in respect of these properties as follows:- The first defendant to pay mesne profits at the rate of 209 muras and 21 seers of rice and Rs. 32/- per year. The defendants 2 to 4 to pay the plaintiff future mesne profits at the rate of 122 muras and Rs. 15/-, that the 5th defendant to pay plaintiff future mesne profits at the rate of 32 muras of rice and Rs. 5/- in cash per year. Thus the total yearly mesne profits comes to 363 muras and Rs. 52/-. Calculating the price of rice at Rs. 5/- a mura as mentioned in the memorandum of appeal, the income would come to about Rs. 1867/- according to the above calculation. Probably Rs. 5/- a mura is a little too low, and also the Government have taken objections to the amount of mesne profits decreed as per the memorandum of objections filed by the Government. If

the

the annual income is roughly taken at Rs. 2000/-, the value of the estate calculated at 20 years' purchase will be about Rs. 40,000/- I am mentioning this figure only with a view to give the Government some rough idea as regards the value of the whole estate as appearing from the printed papers in the appeals.. It is nothing more than a very rough estimate. I subsequently found from page 5 of the G.O. 2441 already quoted that the Collector's estimate of the value of the whole properties was about Rs. 31,000/-.

The appellants seem anxious to be allowed the option of paying to the Government the value of the moiety of the estate which under the compromise is to be decreed to the Government. I said that I could not say anything on that matter but they seem anxious to retain the whole estate on paying the Government the price of the Government's moiety as may be fixed by the Collector of South Karana Finally, I suggested to the appellants that in case of Government agreeing to the compromise in order to avoid future dispute, it is necessary that they should undertake to bring on record in the High Court Sarasvathi's sons (minors) as parties to the appeals and to arrange to have the necessary steps taken to have the compromise binding on them also seeing that the 1st defendant is Sarasvathi's mother I understand that they would have no objection to this.

To expedite matters, I have also sent a copy of this letter to the Board of Revenue also. Seeing that the appeals will be posted for orders next week, very early orders are therefore solicited in the matter as the court remarked that the appeals should be decided by the High Court before Mr. Sundaram Chetti J. leaves the Bench..

m

V.E
(Special)

From the Under Secretary
to Govt, Rev. Depts.
To the Secretary, Board of
Revenue (LRAS)

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Suits - Escheat - South
Canara - Appeals Nos
94, 108, and 171 of 1923
. High Court - Letter from
the Govt Pleader No 953
of 5-10-1926.

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~~The Boards of Revenue~~
Please
~~Will you kindly~~ expedite
the remarks of the Board
of Revenue on the letter
from the Govt. Pleader read
above

9/10.

9/10.
P.C.
DEF
9 OCT 1926
Sep
9/10/26.

C.F. 31

REVENUE 17 DEPARTMENT.

CURRENT No. 2647-E

Received 12 OCT 1926 192 . *Registered* 12.10.26 1926.

Subject.

Suits (South Kanara) High Court- Appeals Nos. 94,108 and 171/23 Escheat- Compromise- Board's remarks- Submitted.

ENCLOSURES.
No.
Spare copies.

Mis. No. 2308

Station Madras. *Dated the* 11th October 1926 ~~192~~

From

W. Scott Brown Esq.,I.C.S.,
Secretary,
~~The~~ Board of Revenue ~~Revenue~~ Land Revenue & Settlement, ~~etc.~~ ~~Separate Revenue.~~

P.L.Moore Esq., C.I.E.,I.C.S.,
Commissioner of Land Revenue.

Resolution
~~Reference.~~

Read the following paper:-

Letter from M.R.Ry. Rao Bahadur C.V.Anantakrishna Ayyar Avl. Ag. Government Pleader, Madras, dated 5th October 1926.

Resolution.

The Board agrees with the Government Pleader, Madras in considering that the appeals may be compromised on the lines suggested by him. With reference to paragraph 7 of B.S.O. 197 Government may accept 'the value' of the half share of the property as fixed by the Collector in lieu of of the half share of the property itself which will be due under the compromise only on condition that the defendants agree to indemnify Government against any possible litigation in the ensuing 12 years.

2. For purposes of calculation of the value of the property the price of a mura has been taken as Rs.5. The gazette rates reported by the Collector in 1922 were Rs.6-6-0, 7-4-0 and 9-4-0. The Board considers that the current market rates which may be higher than those of 1922 should be adopted for the purpose of fixing the valuation of the Government's share and that the determination may be left to the Collector.

U Gopalan
for Secretary.

To the Secretary to Government, Revenue Dept.

19

C No 2593 E/26

Suits - Escheat - South Kanara - Appeals Nos 94, 108 and 171 of 1923 - High Court

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Previous paper

Go No 2441 Rev dy 9-8-1917.

From the Govt Pleader, Madras
No 953 dy 5-10-1926.

To under Secy

The Govt Pleader, Madras has sent a copy of his letter to the Board of Revenue. The Board of Revenue may be requested to expedite its remarks on the letter. A draft T. M. is submitted for approval.

2 It is however submitted that from the Govt Pleader's letter it is not clear as it would appear that the best course would be to accept his suggestion that the matter may be compromised on the terms suggested by the Govt Pleader. The Board's remarks may be awaited till 15-10-1926. when the file will be re-submitted for orders the question involved

20

the C. P. s letter is ~~what~~ purely legal ie whether Sarasvathi woman can be an heir under Hindu Law. We have to rely the Govt. Pleaders opinion. Meanwhile the appeal Suit be Compro e terms of the Compromise are given ~~at~~ in portion A at page 12

The result of not going in to Compromise is given at portion B at pages 12 & 13 C.F. Govt. ~~will lose~~ ~~stands to~~ may lose by allowing the Appeal Suit to proceed. If the Boards Remarks are not received before the 13th the file will again be Resubmitted for orders

Sm.
9/10/26

Sm.
9/10

Telephone to the Board of Rev (L.R.95)

C.P. 2647 E/26 from the Board of Rev
(L.R.98) 2308 dt 11-10-26.

~~Reference~~ Proceedings dated 11-10-26 at pages 17-18 Cf. the Board's views may be concurred in and Copy of the B.P. may be Communicated to the Govt. Pleader

~~Sp~~ A draft order is submitted for approval

13/10/26

13/10

13.x.26

S.

C2 13.x.26

C1 13.x.26

Issue 13.x.26

Sectt. II-5 (5)—25,000—25-11-25. (6)

23

Rev DEPARTMENT.

	Date.	Initials.
When received for Fair-copying.		
When copied ..	13/10	
When examined ..		
When signed ..		
When despatched ..		

READ AGAIN G.O. No. 2441 Rev., dated 9 - 8 1927.

" " " " " " 192

READ ALSO:—

C. No. 28938/26 From the Govt Pleader Madras, No. 953, dated 5 - 10 1926.

" " 26475/26 " " Board of Revn (R.R.48) " 2308 " 11 - 10 1926.

" " " " " " 192

Rep[ort] rec[eive]d at 4 pm.

ORDER.

No. 1767, dated 13 - 10 - 1926

Mis

Dp today & mark V.E (Special) in the Cover addressed to the Govt Pleader, Madras

pm 13/10/26

..should be with the Govt Pleader before 4 P.m today

pm 13/10/26

2.45 p.m 13/10/26

The Government agree with the Board of Revenue in the view expressed in its Proceedings read above. A Copy of the Board's proceedings is Communicated to the Govt Pleader, Madras

18/10

13 + 6

the Govt Pleader, Madras with Copy of B.P. - Q of 14 2A of 30 Board of Rev (R.R.48) Q + O

SM. 13/10/26